

# DSSA

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310 NORTH MILWAUKEE AVE.  
LAKE VILLA, IL 60046  
(847)356-7800 • FAX (847)356-8791

May 19, 1999

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VIA PRIORITY MAIL

Ms. Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
445 Twelfth St., SW Rm. TW-A 325  
Washington, DC 20554

**RE: SBC Communications Inc., and Ameritech Corporation  
(CC DKT No.98-141)**

Dear Ms. Salas:

In accordance with the Ex-parte Submission, I am forwarding a copy of Neighborhood Learning Network's Motion to order Joint Applicants to Provide Information and to Extend Decision Date Under Sec. 7-204(D).

I appreciate your time and interest. If I can clarify my position or be of help in this matter, please feel free to contact me.

Sincerely,



Don S. Samuelson

DSS/sc

Enc.

cc: Thomas Krattenmaker  
Robert Atkinson  
Bill Dever

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STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

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SBC Communications, Inc., SBC )  
Delaware Inc., Ameritech )  
Corporation, Illinois Bell )  
Telephone Company d/b/a Ameritech )  
Illinois, And Ameritech Illinois )  
Metro, Inc. )  
)  
Joint Application For Approval Of )  
The Reorganization Of Illinois Bell )  
Telephone Company d/b/a Ameritech )  
Illinois, And The Reorganization Of )  
Ameritech Illinois Metro, Inc. In )  
Accordance With Section 7-204 Of )  
The Public Utilities Act And For All )  
Other Appropriate Relief. )

ICC Docket No. 98-0555

**NEIGHBORHOOD LEARNING NETWORKS' MOTION TO ORDER JOINT  
APPLICANTS TO PROVIDE INFORMATION AND TO EXTEND  
DECISION DATE UNDER § 7-204(D)**

Intervenors Neighborhood Learning Networks, Inc. and DSSA, by their attorneys, move (1) that the Commission order Joint Applicants to provide information and answer questions necessary to evaluate the proposed merger, and (2) that the Commission extend the deadline for approving or denying the merger by the length of the delay attributable to Joint Applicants' failure to provide this information earlier in the proceeding, as contemplated in Section 7-204(d) of the Public Utilities Act. 220 ILCS 5/7-204(d). In support of this motion Neighborhood Learning Networks states:

**Joint Applicants' Evidence is Insufficient**

1. As many of the Commissioners commented at the initial session of public deliberations on May 13, there are significant voids in the record. In particular, the Joint Applicants' proof is fatally vague in areas where the Commission must make findings

and determinations, and where it may impose conditions necessary to protect the interests of Ameritech's customers.

2. The Commission must make its findings by a preponderance of the evidence. The record contains no evidence on the proposed merger's effect on basic residential and small business customers, let alone "disadvantaged" and "underserved" markets with respect to service (§ 7-204(b)(1)), competition (§ 7-204(b)(6)), or rates (§ 7-204(b)(7))--the areas of greatest importance to Neighborhood Learning Networks. These are markets over which the Commission has jurisdiction. They are markets for which remedies were crafted in the 1997 SBC/Pac-Tel merger, and in the recent SBC/Ameritech proceedings in Ohio. They are markets for which Universal Service and 911 service have special importance. But, they are also markets ignored by the Joint Applicants and the Hearing Examiners.

3. Likewise, there were numerous unanswered questions during oral argument about whether an Illinois version of the Section 271 checklist could satisfy the Commission that a competitive marketplace would accompany approval of the proposed merger. And on the last day of oral argument, the Chairman posed hypothetical questions on "savings," seeking to elicit a clear method for determining the nature, timing and amount of savings, and a rationale for their allocation. The Joint Applicants' responses to these inquiries raise as many questions as they answer.

4. Under similar circumstances the Virginia Corporation Commission in March turned down the merger petition of Bell Atlantic and GTE. "Petitioners simply have not provided evidence or information sufficient to show how they will assure the continuation of adequate service to the public at just and reasonable rates if they were

allowed to combine.” Joint Petition of Bell Atlantic Corp. and GTE Corp., Case No. PUA980031, pp. 17-18, available at [www.state.va.us/scc/orders/case/a980031m.pdf](http://www.state.va.us/scc/orders/case/a980031m.pdf).

**Request for Information Under Section 7-204(d)**

5. Section 7-204(d) offers a procedural mechanism to obtain information that might clarify an inadequate record. It authorizes the Commission to order applicants to produce data and answer questions, and allows the Commission to extend its decision deadline for such additional time as is needed to gather, introduce and review the materials requested.

6. Given the Commission’s apparent dissatisfaction with the record, and the critical effect of this merger on telecom competition, rates and service in Illinois for years to come, the Commission should consider using § 7-204(d). It should order the Joint Applicants to provide additional information before the Commission is required to decide on its “findings,” “determinations” and “conditions.”

7. We have attached as Exhibit A sample questions in the areas of particular interest to Neighborhood Learning Networks that the Commission might use in its request for additional information from the Joint Applicants.

8. We suggest that the Commission formulate its questions by June 1, 1999; that Joint Applicants answer by June 22, with comment from parties of record by July 13; and that the Commission review these submissions, meet for further discussion and debate, and render its decision by the end of August 1999.

WHEREFORE, Intervenors Neighborhood Learning Networks, Inc. and DSSA urge that the Commission order Joint Applicants to provide information and answer questions along the lines set forth in Exhibit A, and that the Commission extend

commensurately the date by which it will approve or reject the merger as permitted under § 7-204(d).

Dated: May 14, 1999

Respectfully submitted,

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Peter V. Baugher  
SCHOPF & WEISS  
304 West Randolph Street  
Chicago, Illinois 60606  
312-701-9300

Attorneys for Intervenors Neighborhood  
Learning Networks, Inc. and DSSA

**NEIGHBORHOOD LEARNING NETWORKS' MOTION TO ORDER JOINT  
APPLICANTS TO PROVIDE INFORMATION AND TO EXTEND  
DECISION DATE UNDER § 7-204(D)**

**EXHIBIT A**

**I. The Impact of the Merger on Basic, Disadvantaged and Underserved Markets**

General Question: What information can the Joint Applicants provide the Commission to meet their burden of proving that the proposed merger will not likely have an adverse impact on service, competition and rates for average/basic and disadvantaged residential markets, and for small, neighborhood and family businesses?

1. Are these markets over which the Commission has jurisdiction and for which § 7-204(b) "findings" must be made?
2. Was there not repeated reference to these markets in the rebuttal testimony, cross examination, briefs and oral argument of DSSA/Neighborhood Learning Networks?
3. Did Joint Applicants make **any** reference to the likely impact the proposed merger would have on services, competition and rates for these markets?
4. Was there any evidence **at all** produced by the Joint Applicants with respect to the likely impact the merger would have on these markets?
5. Wasn't there explicit reference to these markets in SBC/PacTel and a California Community Partnership created and funded to serve the needs of these markets?
6. Didn't SBC/Ameritech create an expanded universal service program in Ohio to serve the needs of these markets?
7. Didn't SBC/Ameritech commit to an equitable "roll out" of ADSL lines in inner city neighborhoods as part of its settlement in Ohio?
8. Didn't SBC/Ameritech create and fund a public technology intervention and an expansion of the Ohio community technology center program as part of the settlement reached in Ohio?
9. Why have the Joint Applicants dismissed the fact and needs of these markets in Illinois, when they were recognized and provided for in both California and Ohio?
10. Wasn't there recognition of the importance of the "digital divide" in the cross examination testimony of James Kahan and Karen Jennings, and the suggestion that this would be an appropriate policy issue for the Commission to decide?

11. What is the current condition of universal service programs in Illinois? Have they deteriorated in recent years? Is there any evidence in the record on this subject? Specifically, what record evidence is there that Illinois' performance in this area will not continue to deteriorate?
12. What commitments, if any, is SBC/Ameritech willing to make to basic and underserved residential and business customers in Illinois, comparable to (a) SBC's California Partnership Commitment, or (b) SBC/Ameritech's promises with respect to services for the disabled?
13. What business or other current Ameritech Illinois customers would be served by an affiliated National-Local SBC Company? What impact would such a reallocation of service providers have on Ameritech Illinois and its remaining residential and business customers?

## **II. Merger Savings**

General Question: What assumptions and analysis were used by SBC CEO Whitacre in the cover story in Business Week (April 12, 1999, page 84) where he estimated annual Ameritech "savings" from the merger to be \$1.2 billion (\$100 million a year if Ameritech Illinois' regulated business represents 8.77% of the overall Ameritech total)? What assumptions and analysis were used by the Joint Applicants in this merger proceeding to predict merger savings to be \$30 million over three years (\$10 million a year)? What information can the Joint Applicants produce to reconcile this 1000% difference in estimated savings amounts?

1. Why is there a "savings" provision in the merger statute?
2. Is it to compensate ratepayers for the "lag" between the time the Joint Applicants begin to realize merger savings resulting from redundancies, lower costs and economies of scale, and the time when competition in the marketplace results in higher quality services and lower costs?
3. Is it be to do "rough justice" in allocating merger premiums and merger savings between shareholders and ratepayers, when both groups contributed to the creation of value in the enterprise when it was a regulated monopoly?
4. What analytical structure of expense categories, time periods and amounts did Ameritech use in coming up with its estimated "savings" of \$98 million?
5. What analytical structure, and assumptions, did SBC Chairman Whitacre use in stating that there would be \$1.2 billion in annual savings resulting from the merger?
6. Is there some way to reconcile the estimates of "savings" made by Ameritech and SBC to the financial markets with the savings estimates they have made during these merger proceedings before the Commission?

7. What economic assumptions does SBC/Ameritech make with respect to savings in those areas where the merger can provide for the permanent elimination of redundant departments and the elimination or reduction in cost of senior executive personnel?
8. What assumptions does SBC/Ameritech make with respect to the current “costs” to Ameritech of its current executive compensation levels, and the reductions in numbers, salary levels and fringe benefits that will be appropriate after the merger?
9. Do the Joint Applicants have a preference in the allocation of savings to ratepayers in the form of surcredits, or in the types of programs created in the California Community Partnership or the proposed Illinois Community Technology Fund? Why?
10. Can the Joint Applicants provide the Commission with a scope of work, and definitions, that the Commission could use in instructing an auditing firm in determining savings?

### **III. Illinois Version of Section 271 Open Markets Checklist**

General Question: What process do the Joint Applicants recommend the Commission follow to assure itself that there is a competitive marketplace in Illinois for the average and disadvantaged residential customer, and for small, neighborhood and family businesses?

1. What are the marketplace and competition assumptions that the FCC has made in developing its Section 271 checklist? Why is it that the satisfaction of these checklist items are presumed to create a competitive marketplace?
2. Can the elements of the 14 point checklist be explained in clear and simple terms, without resorting to technical jargon, so that the Commission can understand why it is that the satisfaction of the checklist items presumptively results in a competitive marketplace?
3. Can the Joint Applicants explain the process that was used to satisfy the Texas Public Utility Commission that the Section 271 checklist was completed in Texas to the satisfaction of the Texas Public Utility Commission?
4. What did SBC learn in the Texas proceeding that would enable a similar program to be created in Illinois on an expedited basis? What role did Texas Commissioners play in the process to facilitate the completion of the checklist? What role should Illinois Commissioners be expected to play in an Illinois proceeding? What roles were played by Texas PUC staff in the completion of the checklist? Are there ways that CLECs can participate in the process to assure the timely completion of the process?



5. At what stage are PacTel and SBC in completing the 271 checklist in California? When did this process begin? When is it projected to be complete, at least as to the satisfaction of the California PUC, if not the FCC?
6. What items on the checklist have been completed by Ameritech in Illinois? When were those items completed? What checklist items remain? What suggestions do the Joint Applicants have to facilitate the creation of an open marketplace structure in Illinois? With respect to the participation of the Commissioners? The ICC Staff? Third party testing? The CLEC participation in the process?
7. What types of conditions are the Joint Applicants willing to accept to assure that some variant of the Section 271 checklist will be completed in Illinois at the time and on the terms agreed to by the Joint Applicants as a condition of the approval of the merger? Penalties?
8. Can the Joint Applicants set out a critical path and timetable, with dates and milestones, to show how they plan to comply with an Illinois version of the Section 271 checklist?
9. Are there any parts of the checklist that cannot be technically complied with at the present time? If so, do the Joint Applicants have recommendations on alternative ways that the checklist can be satisfied?
10. What specific suggestions do the Joint Applicants have that would simplify and expedite the satisfaction of an Illinois version of the Section 271 checklist?